

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
ex rel. Mary J. Downy,

Plaintiff,

v.

CORNING, INC., CORNING
CLINICAL LABORATORIES, INC.,
CORNING LIFE SCIENCES, INC.,
METPATH CORNING CLINICAL LABS,
INC., METPATH, INC.

Defendants.

FILED
01 FEB -2 PM 3:15

Case No. CIV-96-0378 BB/DS

**JOINT MOTION FOR INDEFINITE STAY OF
PROCEEDINGS PENDING NEGOTIATION**

Defendants, Corning, Inc., *et al.*, ("Corning") on behalf of itself and the other defendants that have been served, together with plaintiff United States of America *ex rel.* Mary J. Downy ("Downy") hereby move this Court to stay this action pending the parties' attempts to resolve the litigation. In support thereof, the parties state:

A. PROCEDURAL HISTORY

This is a qui tam case filed by the plaintiff-relator, in which the government has formally declined to intervene. The Court has denied defendants' motion to dismiss, and pursuant to an agreement with counsel that was communicated to this Court by letter dated January 3, 2000 but not approved by the Court, are due to answer the relator's complaint by February 16, 2001.

B. STATUS OF NEGOTIATIONS

At present, the defendants have provided to the relator copies of the documents that were previously produced to the government, and were the basis for the government's decision to

61

decline to litigate this case. The documents are voluminous, and the nature of the allegations are such that an extensive analysis of the interrelationship of the documents must be undertaken in order to understand whether any claims filed for the lab tests in question were “false” within the meaning of the false claims act. The parties have begun discussing issues relating to whether the defendants are liable given the facts unique to this case, and, if so, the extent of any liability.

Assuming that any claims filed were “false”, then ascertaining the extent of any damage to the programs is complicated. Proof of loss necessitates the relator’s obtaining utilization data from state or federal health insurance programs, or both, for the years at issue, a process that is expected to take several weeks or even months to accomplish. Neither party wishes to bear the substantial costs of hiring experts and conducting formal discovery if the relator’s proof of loss information either cannot be obtained from the governments because of the passage of time, or if it is obtained and shows that the damages to the government were *de minimis*.

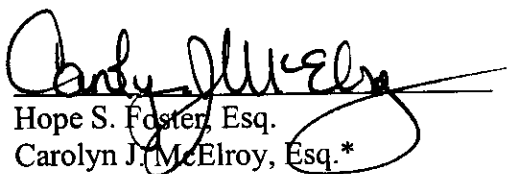
Finally, if the relator is able to advance a viable theory of loss and produce evidence of damages, a stay will permit the parties an opportunity to discuss the potential for a settlement with each other, and with the government, without either party’s further burdening the Court or bearing unnecessary litigation expense.

C. CONCLUSION

The Court has the discretionary authority to stay cases in the interest of justice and to conserve scarce judicial and attorney resources.

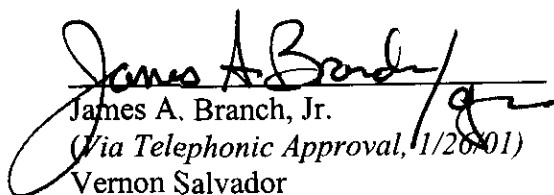
WHEREFORE, the parties jointly ask the Court to enter an indefinite stay pending negotiations as to liability and damages.

Respectfully submitted,


Hope S. Foster, Esq.
Carolyn J. McElroy, Esq.*
Laura J. Oberbroeckling, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, PC
701 Pennsylvania Ave., N.W.
9th Floor
Washington, D.C. 20004
Telephone: 202-434-7300
Telefacsimile: 202-434-7400
E-Mail: hsfoster@mintz.com

Robert W. Lasater
Henry M. Bohnhoff
RODEY, DICKASON,
SLOAN, AKIN & ROBB, P.A.
P.O. Box 1888
Albuquerque, NM 87103
505-765-5900

Attorneys for Defendants


James A. Branch, Jr.
(Via Telephonic Approval, 1/26/01)
Vernon Salvador
1700 Avenue Las Campanas, N.W.
Albuquerque, NM 87107

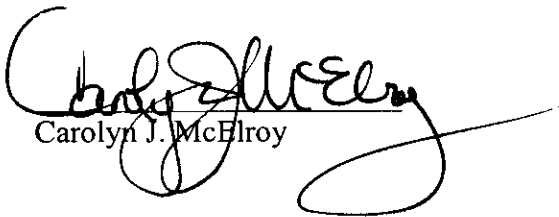
Attorney for Plaintiff-Relator

* Admitted in Maryland only; practicing under the supervision of the partners of the Washington, D.C. office of Mintz Levin

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Motion for Indefinite Stay of the Proceedings Pending Negotiation were mailed via first-class mail, postage pre-paid to the following:

John J. Kelly
United States Attorney
Edwin G. Winstead
Assistant United States Attorney
U.S. Department of Justice
District of New Mexico
Post Office Box 607
Albuquerque, NM 87103


Carolyn J. McElroy